

AMENDED IN ASSEMBLY APRIL 6, 2006  
AMENDED IN ASSEMBLY MARCH 27, 2006  
CALIFORNIA LEGISLATURE—2005–06 REGULAR SESSION

## ASSEMBLY BILL

**No. 2159**

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**Introduced by Assembly Member Cogdill**

February 21, 2006

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An act to amend Section 1270.1 of the Penal Code, relating to bail.

### LEGISLATIVE COUNSEL'S DIGEST

AB 2159, as amended, Cogdill. Bail: residential burglary.

Existing law requires that a court hold a hearing in cases involving specific offenses before the court sets bail at an amount more or less than the scheduled amount. Under existing law, offenses involving residential burglary are specifically excepted.

This bill would remove that exception.

Because this bill would ~~increase the amount of time certain defendants spend incarcerated in a local facility~~ *change the penalty for certain crimes*, it would impose a state-mandated local program.

~~The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.~~

~~This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.~~

*The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state.*

*Statutory provisions establish procedures for making that reimbursement.*

*This bill would provide that no reimbursement is required by this act for a specified reason.*

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: yes.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 1270.1 of the Penal Code is amended to  
2 read:

3 1270.1. (a) Before any person who is arrested for any of the  
4 following crimes may be released on bail in an amount that is  
5 either more or less than the amount contained in the schedule of  
6 bail for the offense, or may be released on his or her own  
7 recognizance, a hearing shall be held in open court before the  
8 magistrate or judge:

9 (1) A serious felony, as defined in subdivision (c) of Section  
10 1192.7, or a violent felony, as defined in subdivision (c) of  
11 Section 667.5.

12 (2) A violation of Section 136.1 where punishment is imposed  
13 pursuant to subdivision (c) of Section 136.1, 262, 273.5, 422  
14 where the offense is punished as a felony, or 646.9.

15 (3) A violation of paragraph (1) of subdivision (e) of Section  
16 243.

17 (4) A violation of Section 273.6 if the detained person made  
18 threats to kill or harm, has engaged in violence against, or has  
19 gone to the residence or workplace of, the protected party.

20 (b) The prosecuting attorney and defense attorney shall be  
21 given a two court-day written notice and an opportunity to be  
22 heard on the matter. If the detained person does not have counsel,  
23 the court shall appoint counsel for purposes of this section only.  
24 The hearing required by this section shall be held within the time  
25 period prescribed in Section 825.

26 (c) At the hearing, the court shall consider evidence of past  
27 court appearances of the detained person, the maximum potential  
28 sentence that could be imposed, and the danger that may be  
29 posed to other persons if the detained person is released. In  
30 making the determination whether to release the detained person  
31 on his or her own recognizance, the court shall consider the

1 potential danger to other persons, including threats that have  
2 been made by the detained person and any past acts of violence.  
3 The court shall also consider any evidence offered by the  
4 detained person regarding his or her ties to the community and  
5 his or her ability to post bond.

6 (d) If the judge or magistrate sets the bail in an amount that is  
7 either more or less than the amount contained in the schedule of  
8 bail for the offense, the judge or magistrate shall state the reasons  
9 for that decision and shall address the issue of threats made  
10 against the victim or witness, if they were made, in the record.  
11 This statement shall be included in the record.

12 ~~SEC. 2. If the Commission on State Mandates determines that~~  
13 ~~this act contains costs mandated by the state, reimbursement to~~  
14 ~~local agencies and school districts for those costs shall be made~~  
15 ~~pursuant to Part 7 (commencing with Section 17500) of Division~~  
16 ~~4 of Title 2 of the Government Code.~~

17 *SEC. 2 No reimbursement is required by this act pursuant to*  
18 *Section 6 of Article XIII B of the California Constitution because*  
19 *the only costs that may be incurred by a local agency or school*  
20 *district will be incurred because this act creates a new crime or*  
21 *infraction, eliminates a crime or infraction, or changes the*  
22 *penalty for a crime or infraction, within the meaning of Section*  
23 *17556 of the Government Code, or changes the definition of a*  
24 *crime within the meaning of Section 6 of Article XIII B of the*  
25 *California Constitution.*